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Compilation of Industrial
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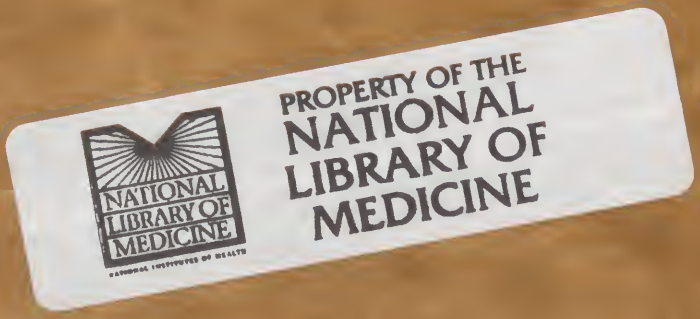

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Department of Labor and Industries

Compilation of

Industrial Insurance

and

Medical Aid Acts

As Amended by Session Laws of

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INDUSTRIAL INSURANCE LAW

(References are to Remington's Revised Statutes of Washington.)

Sec. 7673. Declaration of Police Power.

The common law system governing the remedy of workmen against employers for injuries received in hazardous work is inconsistent with modern industrial conditions. In practice it proves to be economically unwise and unfair. Its administration has produced the result that little of the cost of the employer has reached the workman and that little only at large expense to the public. The remedy of the workman has been uncertain, slow and inadequate. Injuries in such works, formerly occasional, have become frequent and inevitable. The welfare of the state depends upon its industries, and even more upon the welfare of its wage-worker. The State of Washington, therefore, exercising herein its police and sovereign power, declares that all phases of the premises are withdrawn from private controversy, and sure and certain relief for workmen, injured in extrahazardous work, and their families and dependents is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding or compensation, except as otherwise provided in this act; and to that end all civil actions and civil causes of action for such personal injuries and all jurisdictions of the courts of the state over such causes are hereby abolished, except as in this act provided.

Sec. 7674. Enumeration of Extrahazardous Employment.

There is a hazard in all employment, but certain employments have come to be, and to be recognized as being inherently constantly dangerous. This act is intended to apply to all such inherently hazardous works and occupations, and it is the purpose to embrace all of them, which are within the legislative jurisdiction of the state, in the following enumeration, and they are intended to be embraced within the term "extrahazardous" wherever used in this act, to-wit:

Factories, mills and workshops where machinery is used; printing, electrotyping, photo-engraving and stereotyping plants where machinery is used; foundries, blast furnaces, mines, wells, gasworks, waterworks, reduction works, breweries, elevators, wharves, docks, dredges, smelters, powder works; laundries operated by power; quarries, engineering works; logging, lumbering and shipbuilding operations; logging, street and interurban railroads; buildings being constructed, repaired, moved or demolished; telegraph, telephone, electric light or power plants or lines, steam heating or power plants, steamboats, tugs, ferries and railroads; installing and servicing radios and electrical refrigerators; general warehouse and storage; teaming, truck driving and motor delivery, including drivers and helpers, in connection with any occupation except agriculture; stage, taxicab and for hire car driving; restaurants, taverns, clubs and establishments except private boarding houses, serving food or drink to the public or to members for consumption on the premises; bunk houses, kitchens and eating houses in connection with extrahazardous occupations or conducted primarily for employees in extrahazardous occupations; transfer, drayage and hauling; warehousing and transfer; fruit warehouse and packing houses. If there be or arise any extrahazardous occupation or work other than those hereinabove enumerated, it shall come under this act, and its rate of contribution to the accident fund hereinafter established shall be, until fixed by legislation, determined by the department hereinafter created, upon the basis of the relation which the risk involved bears

to the risk classified in section 7676 of Remington's Revised Statutes: *Provided, however,* The following operations shall not be deemed extrahazardous within the meaning, or be included in the enumeration of this section, to-wit: Using power-driven coffee grinders in wholesale or retail grocery stores; using power-driven washing machines in establishments selling washing machines at retail; using computing machines in offices; using power-driven taffy pullers in retail candy stores; using power-driven milk shakers in establishments operating soda fountains; using power-driven hair cutters in barber shops; using power-driven machinery in beauty parlors; using power-driven machinery in optical stores.

The Director of Labor and Industries through and by means of the Division of Industrial Insurance shall have power, after hearing had upon its own motion or upon the application of any party interested, to declare any occupation or work to be extrahazardous and to be under this act. The Director of Labor and Industries shall fix the time and place of such hearing and shall cause notice thereof to be published once at least ten (10) days before the hearing in at least one (1) daily newspaper of general circulation, published and circulated in each city of the first-class of this state. No defect or inaccuracy, in such notice or in the publication thereof, shall invalidate any order issued by the Director of Labor and Industries, after hearing had. Any person affected shall have the right to appear and be heard at any such hearing. Any order, finding or decision of the Director of Labor and Industries made and entered under the foregoing provisions of this act shall be subject to review within the time and in the manner specified in section 7697 of Remington's Revised Statutes, and not otherwise.

Sec. 7674-a. Work of Salaried Peace Officers Extrahazardous.

The work performed by salaried peace officers of the state, the counties, and the municipal corporations of the state, is hereby declared to be extrahazardous within the meaning of the preceding sections, and the state, county and municipal corporations as employers, of such salaried peace officers as workmen, shall be subject to all of the provisions of law relating to the compensation and medical and surgical care of injured workmen and entitled to all the benefits thereof. The employers' payments into the accident fund and medical aid fund shall be made from the treasury of the state, county or municipality respectively. The classification and rate of premium shall be fixed by the Director of Labor and Industries, through and by means of the division of industrial insurance, upon the basis of the relation which the risk involved bears to the risks classified in section 7674: *Provided,* That whenever and so long as by the state law, city charter or municipal ordinance, provision is made for such peace officer, injured in the course of employment, such officer shall not be entitled to the benefits of this act and shall not be included in the payroll of the state, county or municipal corporation under this act: *And, provided further,* That no such peace officer shall receive compensation except for injuries sustained in the course of his employment as such peace officer.

Sec. 7674-1. Workman Defined—Independent Contractor.

The term workman within the contemplation of this act means every person in this state who is engaged in the employment of or who is working under an independent contract, the essence of which is his personal labor for

any employer coming under this act whether by way of manual labor or otherwise in the course of his employment.

Sec. 7675. Definitions.

In the sense of this act words employed mean as here stated, to-wit:

Factories mean undertakings in which the business of working at commodities is carried on with power-driven machinery, either in manufacture, repair or change, and shall include the premises, yard and plant of the concern, except when otherwise expressly stated.

Workshop means any plant, yard, premises, room or place wherein power-driven machinery is employed and manual labor is exercised by way of trade for gain or otherwise in or incidental to the process of making, altering, repairing, printing or ornamenting, finishing or adapting for sale or otherwise any article or part of article, machine or thing, over which premises, room or place the employer of the person working therein has the right of access or control, except when otherwise expressly stated.

Mill means any plant, premises, room or place wherein machinery is used, any process of machinery, changing, altering or repairing any article or commodity for sale or otherwise, together with the yards and premises which are a part of the plant, including elevators, warehouses and bunkers, except when otherwise expressly stated.

Mine means any mine where coal, clay, or mineral, gypsum or rock is dug or mined underground.

Quarry means an open cut from which coal is mined, or clay, ore, mineral, gypsum, sand, gravel or rock is cut or taken for manufacturing, building or construction purposes.

Engineering work means any work of construction, improvement or alteration or repair of buildings, structures, streets, highways, sewers, street railways, railroads, logging roads, interurban railroads, harbors, docks, canals, electric, steam or water power plants, telegraph and telephone plants and lines, electric light or power lines, and includes any other works for the construction, alteration or repair of which machinery driven by mechanical power is used, except when otherwise expressly stated.

Except when otherwise expressly stated, employer means any person, body of persons, corporate or otherwise, and the legal personal representatives of a deceased employer, all while engaged in this state in any extrahazardous work, by way of trade or business, or who contracts with one or more workmen, the essence of which is the personal labor of such workman or workmen, in extrahazardous work.

Workman means every person in this state, who is engaged in the employment of any employer coming under this act whether by way of manual labor or otherwise, in the course of his employment: *Provided, however,* That if the injury to a workman is due to the negligence or wrong of another not in the same employ, the injured workman, or if death result from the injury, his widow, children, or dependents, as the case may be, shall elect whether to take under this act or seek a remedy against such other, such election to be in advance of any suit under this section; and if he takes under this act, the cause of action against such other shall be assigned to the state for the benefit of the accident fund; if the other choice is made, the accident fund shall contribute only the deficiency, if any, between the amount of recovery against such third person actually collected, and the compensation provided or esti-

mated by this act for such case: *Provided, however,* That no action may be brought against any employer or any workman under this act as a third person if at the time of the accident such employer or such workman was in the course of any extrahazardous employment under this act. Any such cause of action assigned to the state may be prosecuted or compromised by the department, in its discretion. Any compromise by the workman of any such suit, which would leave a deficiency to be made good out of the accident fund, may be made only with the written approval of the department.

Any individual employer or any member or officer of any corporate employer who shall be carried upon the payroll at a salary or wage not less than the average salary or wage named in such payroll and who shall be injured, shall be entitled to the benefit of this act as and under the same circumstances, and subject to the same obligations, as a workman: *Provided,* That no such employer or the beneficiaries or dependents of such employer shall be entitled to benefits under this act unless the director of labor and industries prior to the date of the injury has received notice in writing of the fact that such employer is being carried upon the payroll prior to the date of the injury as the result of which claims for a compensation are made.

Dependent means any of the following named relatives of a workman whose death results from any injury, and who leave surviving no widow, widower, or child under the age of eighteen years, viz: Invalid child, father, mother, grandfather, grandmother, stepfather, stepmother, grandson, granddaughter, brother, sister, half-sister, half-brother, niece, nephew, who at the time of the accident are actually and necessarily dependent in whole or in part for their support upon the earnings of the workman. Except where otherwise provided by treaty, aliens other than father or mother, not residing within the United States at the time of the accident are not included. A dependent shall at all times furnish to the director of labor and industries proof satisfactory to the director of labor and industries of the nature, amount and extent of the contribution made by such deceased workman.

Beneficiary means a husband, wife, child or dependent of a workman in whom shall vest a right to receive payment under this act.

Invalid means one who is physically or mentally incapacitated from earning.

The word "child" as used in this act, includes a posthumous child, a stepchild, a child legally adopted prior to the injury and an illegitimate child legitimated prior to the injury.

The word "injury" as used in this act means a sudden and tangible happening, of a traumatic nature, producing an immediate or prompt result, and occurring from without, and such physical condition as results therefrom.

The term "educational standard" shall mean such standards as the supervisor of safety shall make for the purpose of educating and training both employer and workman in the appreciation and avoidance of danger, and in the maintenance and proper use of safe place and safety device standards.

Sec. 7676. Schedule of Contributions—Payrolls—Records of Employment—Penaltics—Medical Aid and Accident Funds—How Kept—Procedure in Reporting Payrolls.

Inasmuch as industry shall bear the greater portion of the burden of the cost of its accidents, each employer shall prior to the fifteenth day of every month, pay into the state treasury (1) for the accident fund and (2) for the

medical aid fund, a certain number of cents for each man hour worked by the workman in his employ, engaged in extrahazardous employment; if, however, there should be a deficit in any class or subclass the Director of Labor and Industries, through the Supervisor of Industrial Insurance, is hereby authorized and directed to assess the same against all the contributors to such class or subclass during the calendar year or fraction thereof in which said deficit was incurred or created. The Director of the Department of Labor and Industries shall have the power to promulgate, change and revise such rates according to the condition of the accident and medical aid funds, and to establish rates for industries declared to be extrahazardous subsequent to the taking effect of this amendment and/or which voluntarily seek coverage under the elective adoption provisions of this act.

The amounts to be paid into the accident fund shall be determined as follows: The Department of Labor and Industries shall, prior to the first day of January of each year determine for each class and/or subclass, a basic premium rate for the ensuing calendar year, and in so doing, shall take into consideration, first, the cost experience of each class and subclass over the two-year period immediately preceding September first of the year in which the basic rate is being fixed; second, the then condition of each class and/or subclass account.

The Department of Labor and Industries shall also, prior to the first day of January of each year determine the premium rate to be paid into said accident fund during the ensuing year by each employer to be credited to each class and/or subclass account, applicable to the employer's operations or business, and in so doing, shall take into consideration, the average cost experience of each employer for each workman hour reported by him during each fiscal year in each such class or subclass over the five year period immediately preceding September first of the year in which the rate is being determined, and in so computing, the cost experience of any employer, the fixed sum of four thousand five hundred dollars ($4,500.00) shall be charged against his experience for each injury resulting in death or total permanent disability of a workman instead of the actual cost to the accident fund of such injury. The actual premium rate which any employer shall be required to pay for the accident fund shall be forty per cent (40%) of the basic rate, plus sixty per cent (60%) of the employer's cost rate for each workman hour reported by him during each fiscal year over the five-year period next preceding the then last September first, but in no case shall the total rate exceed one hundred sixty per cent (160%) of the basic rate.

The basic premium rate for the accident fund and the medical aid fund, effective immediately upon the passage of this act until so modified by the Director of the Department of Labor and Industries, shall be in accordance with the following classifications, subclassifications and schedules:

For Rates and Classifications see yearly Classification and Rate Manual issued January 1st of each year.

Every employer who shall enter into any business, or who shall resume operations in any work or plant after the final adjustment of his payroll in connection therewith, shall, before so commencing or resuming operations, as the case may be, notify the Director of Labor and Industries of such fact, accompanying such notification with an estimate of his payroll and workmen hours for the first calendar month of his proposed operations, and shall make payment of the premiums on such estimate. Every such employer shall be

liable for a premium of at least such estimate. Every such employer shall pay the full basic rate until such time as an experience rating in excess of a one, two, three or four year period may be computed as of a first succeeding September first date, and shall be liable for a premium of at least one dollar per month irrespective of the amount of his workman hours reported during said month to the Department.

To the end that no employer shall evade the burden imposed by an unfavorable or high cost experience, the Director of Labor and Industries shall have the power to determine whether or not an increase, decrease or change (a) of the operating property; (b) of interest in operating property; (c) of employer; (d) of personnel or interest in employer is sufficient to show a *bona fide* change which would make inoperative any high cost experience.

Every employer within the provisions of this act shall on or before the fifteenth day of each month hereafter furnish the Department with a true and accurate payroll and the aggregate number of workmen hours, during which workmen were employed by him during the preceding calendar month, the total amount paid to such workmen during such preceding calendar month, and a segregation of employment in the different classes provided in this act, and shall pay his premium thereon to the accident fund and the medical aid fund. The sufficiency of such statement shall be subject to the approval of the Director of Labor and Industries.

Every employer shall keep at his place of business a record of his employment from which the above information may be obtained and such record shall at all times be open to the inspection of the Director of Labor and Industries, Supervisor of Industrial Insurance, or the traveling auditors, agents or assistants of the Department, as provided in section 7690 of Remington's Revised Statutes of Washington.

In all cases where partners or other persons are excluded on the payroll such statement shall state both the names and occupations of the parties excluded and no such person shall be entitled to compensation unless notice in writing that such excluded person has been included is received by the Department prior to the date of injury to such person. Such employer shall at the time of reporting his payroll and workmen hours also state the names and addresses of any contractor or subcontractor operating for or under him.

Every person, firm or corporation who shall fail to keep such record or fail to make such report in the manner and at the time herein provided shall be subject to a penalty of not to exceed one hundred dollars ($100.00) for each such offense, to be collected by civil action in the name of the state and paid into the accident fund.

Every employer who shall fail to furnish an estimate of payroll and workmen hours and make payments as above provided shall be liable to a penalty of not to exceed five hundred dollars ($500.00) and shall also be liable if an accident has been sustained by an employee prior to the time such estimate is received by the Department, to a penalty in a sum equal to fifty per cent of the cost to the accident fund and medical aid fund of such accident, to be collected in a civil action in the name of the state, and paid into the accident fund and/or medical aid fund. The Director of Labor and Industries may waive the whole or any part of any penalty charged under this act. In respect to any injury happening to any of his workmen during the period such employer shall be in default in the payment of any premium, if such default be after demand for payment, or if such employer shall be in default for failure

to furnish the Department with an estimated payroll and workmen hours or with monthly reports of his payroll and workmen hours as required by this section, the defaulting employer shall not be entitled to the benefits of this act, but shall be liable to suit by the injured workman (or his beneficiaries and dependents), at his or their option, as he would have been on March 14, 1911, and in any action brought against such employer, it shall be no defense for such employer to show that such injury was caused in whole or in part by the negligence of a fellow servant of the injured workman, that the negligence of the injured workman, other than his wilful act committed for the purpose of sustaining the injury contributed to the accident or that the injured workman had knowledge of the danger or assumed the risk which resulted in his injury. If such injured workman or his beneficiaries, or dependents, shall elect to take under this act, such action against the employer shall revert to the state for the benefit of the accident fund and/or medical aid fund.

Any employer, who shall misrepresent to the Department the amount of his payroll or the number of workmen hours upon which the premium under this act is based, shall be liable to the state in ten times the amount of the difference in premiums paid and the amount the employer should have paid, and shall also be guilty of a misdemeanor if such misrepresentations shall be made knowingly. Civil penalties to the state under this act shall be collected by civil action in the name of the state and paid into the accident fund.

For the purpose of such payments into the accident fund, accounts shall be kept with each industry in accordance with the classification herein provided and no class shall be liable for the depletion of the accident fund from accidents happening in any other class. Each class shall meet and be liable for the accidents occurring in such class. The fund thereby created shall be termed the "accident fund" which shall be devoted to the purpose specified for it in this act.

The medical aid fund created in section 7713 of Remington's Revised Statutes of Washington shall not be kept by classes and all payments shall be made from the one fund, but accounts shall be kept with each class and subclass of industry in accordance with the classification herein provided for the purpose of computing the medical aid cost experience of such classes and subclasses and determining the correctness of the medical aid rates charged such classes and subclasses.

It is the intent that the accident fund created under this section shall ultimately become neither more nor less than self-supporting, exclusive of the expense of administration, and if in the adjustment of premium rates by the Director of Labor and Industries the moneys paid into the fund by any class or classes shall be insufficient to properly and safely distribute the burden of accidents occurring therein the Department may divide, rearrange or consolidate such class or classes, making such adjustment or transfer of funds as it may deem proper.

It shall be unlawful for the employer to deduct or obtain any part of the premium required by this section to be by him paid into the accident fund from the wages or earnings of his workmen or any of them, and the making or attempting to make any such deduction shall be a gross misdemeanor. The Director of Labor and Industries shall make corrections of classifications or subclassifications or changes in rates, classes, and subclasses when the best interests of such classes or subclasses will be served thereby. From the origi-

nal classification or premium rating or any change made therein, any employer claiming to be aggrieved may appeal to the Joint Board and to the courts in the manner provided for in section 7697 of Remington's Revised Statutes.

If a single establishment or work comprises several occupations listed in this section in different risk classes, the premium shall be computed according to the workmen hours of each occupation, or in the discretion of the Director of Labor and Industries, a single rate of premium may be charged for the entire establishment based upon the rate of premium of the occupations reporting the largest number of workmen hours: *Provided,* That, when a single establishment or work comprises distinct different risk classes, each employing a considerable number of persons, the right to have the premium computed according to the number of workmen hours of each occupation shall not be denied the employer without hearing: *Provided, further,* That any employer desiring to report his operations in the various distinct risk classifications subsequent to the passage of this act, must, before so reporting, notify the Director of Labor and Industries in writing of such fact, prior to the first day of the month in which such employer desires to segregate his operations, and inform the Director of the segregated classifications he desires. After an employer has segregated his operations into the various distinct risk classifications, unless the employer and the Director agree to the contrary, the employer must continue to report in those segregated classifications as long as they exist in his operation and involve a considerable number of employees.

The Director of Labor and Industries shall have power to authorize any employee of the Department who is an attorney admitted to practice law in the State of Washington to appear for the Department in any action instituted for the purpose of collecting industrial insurance premiums.

That the premiums of employers operating coal mines which shall include shaft sinking and all tunneling in connection with coal mines and the building industry, which shall include, all field activities in connection with the erection, alteration, repairing or demolishing of any building or buildings or part thereof or appurtenance thereto, adapted to residential, business, governmental, educational or manufacturing uses, shall be computed on a base rate only and no merit rating credits or penalties shall be given or imposed on such employers.

The rates and classifications and subclassifications as provided in section 7676 Remington's Revised Statutes, as amended by section 1 of this act, shall take effect as of January 1, 1939.

Sec. 7676-1a. Assessment of Charges Where Previously Injured or Disabled Workman Becomes Totally and Permanently Disabled.

Whenever a workman has sustained a previous bodily infirmity or disability from any previous injury or disease, and shall suffer a further injury or disease in employment covered by this act, and become totally and permanently disabled from the combined effects thereof, then the accident cost rate of the employer at the time of said further injury or disease shall only be charged with the accident cost which would have resulted solely from said further injury or disease had there been no pre-existing disability and which accident cost shall be based upon the experience of the Department in similar injuries or diseases. The difference between the charge thus assessed to the employer at the time of said further injury or disease and the

total cost of the pension reserve shall be assessed against the second-injury fund.

Sec. 7676-1b. Second Injury Fund.

There is hereby created a special fund to be known as the "Second-injury Fund" which shall be used only for the purpose of defraying charges assessed against it as provided in Section 1. There is hereby appropriated to such fund from the Accident Fund, for the fiscal biennium ending March 31, 1947, the sum of five hundred thousand ($500,000.00) dollars or so much thereof as shall be necessary.

Sec. 7676-2. Application to Extrahazardous Work on Federal Lands.

That the application of the industrial insurance and related medical aid and safety laws of the State of Washington, sections 7673 to 7796, inclusive, of Remington's Revised Statutes of Washington, is hereby extended to all lands and premises owned or held by the United States of America, by deed or act of cession, by purchase or otherwise, which are within the exterior boundaries of the State of Washington, and to all projects, buildings, constructions, improvements, and property belonging to the United States of America, which are within the exterior boundaries of the state, in the same way and to the same extent as if said premises were under the exclusive jurisdiction of the state, and as fully as is permitted under the provisions of that act of the Congress of the United States approved June 25, 1936, granting to the several states jurisdiction and authority to apply their state workmen's compensation laws on all property and premises belonging to the United States of America, being 49 United States Statutes at large 1938, title 40, section 290 United States code annotated, 1936 supplement: *Provided,* That this act shall not apply to employees of the United States of America.

Sec. 7679. Schedule of Awards.

Each workman who shall be injured in the course of his employment, or his family or dependents in case of death of the workman, shall receive out of the accident fund compensation in accordance with the following schedule, and, except as in this act otherwise provided, such payment shall be in lieu of any and all rights of action whatsoever against any person whomsoever.

COMPENSATION SCHEDULE

(a) Where death results from the injury the expenses of burial not to exceed one hundred fifty dollars ($150.00) shall be paid to the undertaker conducting the funeral: *Provided,* That no sum shall be paid an undertaker for the burial expenses where the deceased left a widow or an orphan child or children unless the undertaker shall make and file with the Department an affidavit that no part of the burial expenses have been either directly or indirectly paid by or charged to the widow or orphan child or children.

(1) If the workman leaves a widow or invalid widower, a monthly payment of fifty dollars ($50.00) shall be made throughout the life of the surviving spouse, to cease at the end of the month in which remarriage shall occur, and the surviving spouse shall also receive per month for each child of the deceased under the age of eighteen years at the time any monthly payment is due the following payments: For the youngest or only child fifteen dollars ($15.00), for the next or second youngest child ten dollars

($10.00), and for each additional child seven dollars and fifty cents ($7.50): *Provided,* That in addition to the monthly payments above provided for, a surviving widow of any such deceased workman shall be forthwith paid the sum of two hundred and fifty dollars ($250.00).

Upon the remarriage of a widow she shall receive once and for all a lump sum of one thousand dollars ($1,000.00), but the monthly payments for the child or children shall continue as before.

(2) If the workman leaves no wife or husband, but an orphan child or children under the age of eighteen years, a monthly payment of twenty-five dollars ($25.00) shall be made to each such child until such child shall reach the age of eighteen years, but the total monthly payment shall not exceed one hundred dollars ($100.00) and any deficit shall be deducted proportionately among the beneficiaries.

(3) If the workman leaves no widow, widower, or child under the age of eighteen years, but leaves a dependent or dependents, a monthly payment shall be made to each dependent equal to fifty per cent of the average monthly support actually received by such dependent from the workmen during the twelve months next preceding the occurrence of the injury, but the total payment to all dependents in any case shall not exceed fifty dollars ($50.00) per month. If any dependent is under the age eighteen years at the time of the occurrence of the injury, the payment to such dependent shall cease when such dependent shall reach the age of eighteen years. The payment to any dependent shall cease if and when, under the same circumstances, the necessity creating the dependency would have ceased if the injury had not happened.

If the workman is under the age of twenty-one years and unmarried at the time of his death, the parents or parent of the workman shall receive twenty-five dollars ($25.00) per month for each month after his death until the time at which he would have arrived at the age of twenty-one years.

(4) In the event a surviving spouse receiving monthly payments shall die, leaving a child or children under the age of eighteen years, such child or children shall receive each the sum of twenty-five dollars ($25.00) per month until arriving at the age of eighteen years, but the total monthly payment shall not exceed one hundred dollars ($100.00) and any deficit shall be deducted proportionately among the beneficiaries.

(b) Permanent total disability means loss of both legs, or arms, of one leg and one arm, total loss of eyesight, paralysis or other condition permanently incapacitating the workman from performing any work at any gainful occupation.

When permanent total disability results from the injury, the workman shall receive monthly during the period of such disability: (1) If unmarried at the time of the injury, the sum of fifty dollars ($50.00).

(2) If the workman have a wife or invalid husband, but no child under the age of eighteen years, the sum of sixty dollars ($60.00).

If the husband is not an invalid the monthly payment of sixty dollars ($60.00) shall be reduced to twenty-five dollars ($25.00) as long as they are living together as husband and wife.

(3) If the workman have a wife or husband and a child or children under the age of eighteen years, or being a widow or widower, having any such child or children, the monthly payment in the preceding paragraph shall be increased by fifteen dollars ($15.00) for the youngest or only child, ten dollars ($10.00) for the next or second youngest child, and seven dollars and

fifty cents ($7.50) for each additional child under the age of eighteen years.

(4) In case of total permanent disability, if the character of the injury is such as to render the workman so physically helpless as to require the services of an attendant, the monthly payment to such workman shall be increased thirty-five dollars ($35.00) per month as long as such requirement shall continue, but such increases shall not obtain or be operative while the workman is receiving care under or pursuant to any of the provisions of sections 7712 to 7725, inclusive, of this code.

(c) If the injured workman die, during the period of permanent total disability, whatever the cause of death, leaving a widow, invalid widower or child under the age eighteen years, the surviving widow or invalid widower shall receive fifty dollars ($50.00) per month until death or remarriage, to be increased per month for each child of the deceased under the age of eighteen years at the time any monthly payment is due, as follows: For the youngest or only child fifteen dollars ($15.00), for the next or second youngest child ten dollars ($10.00), and for each additional child seven dollars and fifty cents ($7.50); but if such child is or shall be without father or mother, such child shall receive twenty-five dollars ($25.00) per month until arriving at the age of eighteen years. Upon remarriage the payments on account of the child or children shall continue as before to such child or children.

An invalid child while being supported and cared for in a state institution shall not receive compensation under this act. If an injured workman, or the surviving spouse of an injured workman shall not have the custody of a minor child for, or on account of, whom payments are required to be made under this section, such payment or payments shall be made to the person having the lawful custody of such minor child.

(d) (1) When the total disability is only temporary, the schedule of payments contained in paragraphs (1), (2) and (3) of the foregoing subdivision (b) shall apply, so long as the total disability shall continue.

(2) But if the injured workman have a wife or husband and have no child or have a wife or husband, or being a widow or widower, with one or more children under the age of eighteen years, the compensation for the case during the first six months or such lesser period of time as the total temporary disability shall continue, shall be per month as follows, to-wit: Injured workman whose husband is not an invalid, twenty-two dollars and fifty cents ($22.50) and seven dollars and fifty cents ($7.50) for each child; injured workman with wife or invalid husband and no child, fifty dollars ($50.00); injured workman with wife or invalid husband and one child, or being a widow or widower and having one child, sixty-five dollars ($65.00); injured workman with a wife or invalid husband and two children, or being a widow or widower and having two children, seventy-five dollars ($75.00), and seven dollars and fifty cents ($7.50) for each additional child.

Should a workman suffer a temporary total disability, and should his employer, at the time of his injury, continue to pay him the wages which he was earning at the time of such injury, such injured workman shall not receive any payment provided in paragraph (d) subdivision (1) from the accident fund during the period his employer shall so pay such wages.

(3) If such temporary total disability shall endure longer than said six months' period, the schedule of compensation contained in paragraphs (1), (2) and (3) of the foregoing subdivision (b) shall at the end of said six months' period again obtain.

(4) As soon as recovery is so complete that the present earning power of the workman, at any kind of work, is restored to that existing at the time of the occurrence of the injury, the payments shall cease. If and so long as the present earning power is only partially restored, the payments shall continue in the proportion which the new earning power shall bear to the old. No compensation shall be payable out of the accident fund unless the loss of earning power shall exceed five per cent.

No payment shall be made to or for a natural child of a deceased workman, and at the same time, as the step-child of a deceased workman.

(e) There is hereby created in the office of the State Treasurer a fund to be known and designated as the reserve fund out of which shall be made the payments specified in this section for all cases of death or permanent total disability including future payments to be made for the cases of that character which have heretofore arisen. Into the reserve fund there shall be forthwith placed all unexpended funds, in cash or invested, heretofore set aside for cases requiring a reserve. For every case resulting in death or permanent total disability hereafter arising it shall be the duty of the Department to make transfer on their books from the accident fund of the proper class to the reserve fund a sum of money for that case equal to the estimated present cash value of the monthly payments provided for it, to be calculated upon the basis of an annuity covering the payments in this section provided to be made for the case. Such annuities shall be based upon tables to be prepared for that purpose by the State Insurance Commissioner and by him furnished to the State Treasurer, calculated upon standard mortality tables with an interest assumption of three (3) per cent per annum.

The Department shall notify the State Treasurer from time to time of such transfers as a whole and the State Treasurer shall invest the reserve in either state capitol building bonds issued to take up capitol building warrants now outstanding, or in the class of securities provided by law for the investment of the permanent school fund, and the interest or other earnings of the reserve fund shall become part of the reserve fund itself. The Department shall on October 1st of each year, apportion the interest or other earnings of the reserve fund as certified to it by the State Treasurer, to the various class reserve funds according to the average class balance for the preceding year. As soon as possible after October 1st of each year, beginning in the year 1927, the State Insurance Commissioner shall expert the reserve fund of each class to ascertain its standing as of October 1st of that year, and the relation of its outstanding annuities at their then value to the cash on hand or at interest belonging to that fund. He shall promptly report the result of his examination to the Department and to the State Treasurer in writing not later than December 31st, following. If the report shows that there was on said October 1st, in the reserve fund of any class in cash or at interest a greater sum than the then annuity value of the outstanding pension obligations of that class, the surplus shall be forthwith turned over to the accident fund of that class, but if the report shows the contrary condition of any class reserve, the deficiency shall be forthwith made good out of the accident fund of that class. The State Treasurer shall keep accurate accounts of the reserve fund and the investment and earnings thereof, to the end that the total reserve funds shall at all times, as near as may be, be properly and fully invested, and to meet current demands for pension or lump sum payments may, if necessary, make temporary loans to the reserve fund out of the accident fund for that class, re-

paying same from the earnings of that reserve fund or from collections of its investments, or, if necessary, sales of the same.

(f) Permanent partial disability means the loss of either one foot, one leg, one hand, one arm, one eye, one or more fingers, one or more toes, any dislocation where ligaments were severed where repair is not complete or any other injury known in surgery to be permanent partial disability. For the permanent partial disabilities here specifically described, the injured workman shall receive compensation as follows:

LOSS BY AMPUTATION

Of one leg so near the hip that an artificial limb cannot be worn	$3,600.00
Of one leg at or above the knee so that an artificial limb can be worn	2,740.00
Of one leg below the knee	1,870.00
Of great toe with metatarsal bone thereof	580.00
Of great toe at the proximal joint	360.00
Of great toe at the second joint	130.00
Of one other toe other than the great toe with metatarsal bone thereof	200.00
Of second toe at proximal joint	90.00
Of third toe at proximal joint	90.00
Of fourth toe at proximal joint	90.00
Of fifth toe at proximal joint	40.00
Of metatarsal bone on toe other than great toe	100.00
Of one arm so near the shoulder that an artificial arm cannot be worn	3,600.00
Of the major arm at or above the elbow	2,740.00
Of forearm at upper third	2,520.00
Of the major hand at wrist	2,305.00
Of thumb with metacarpal bone thereof	870.00
Of thumb at proximal joint	575.00
Of thumb at second joint	215.00
Of index or first finger at proximal joint	470.00
Of index or first finger at second joint	395.00
Of index or first finger at distal joint	180.00
Of middle or second finger at proximal joint	360.00
Of middle or second finger at second joint	300.00
Of middle or second finger at distal joint	100.00
Of ring or third finger at proximal joint	325.00
Of ring or third finger at second joint	250.00
Of ring or third finger at distal joint	100.00
Of little or fourth finger at proximal joint	125.00
Of little or fourth finger at second joint	90.00
Of little or fourth finger at distal joint	35.00
Of metacarpal bone in finger except thumb	90.00

MISCELLANEOUS

Loss of one eye by enucleation	1,725.00
Loss of sight of one eye	1,295.00
Complete loss of hearing in both ears	2,735.00
Complete loss of hearing in one ear	720.00
Complete broken arch in foot	720.00

Compensation for any other permanent partial disability shall be in the proportion which the extent of such other disability shall bear to that above specified, which most closely resembles and approximates in degree of disability such other disability, but not in any case to exceed the sum of three thousand six hundred dollars ($3,600.00): *Provided,* That for disability to a member not involving amputation, not more than three-fourths (¾) of the foregoing respective specified sums shall be paid: *Provided, further,* That payment for any injury to minor hand or arm or any part thereof, shall not exceed ninety-five (95) per centum of the amount hereinbefore enumerated.

If the injured workman be under the age of twenty-one years and unmarried, the parents or parent shall also receive a lump sum payment equal to ten per cent of the amount awarded to the minor workman.

(g) Should a further accident occur to a workman who has been previously the recipient of a lump sum payment under this act, his future compensation shall be adjudged according to the other provisions of this section and with regard to the combined effect of his injuries and his past receipt of money under this act.

Should a workman receive an injury to a member or part of his body already from whatever cause permanently partially disabled, resulting in the amputation thereof or in an aggravation or increase in such permanent partial disability but not resulting in the permanent total disability of such workman, his compensation for such permanent partial disability shall be adjudged with regard to the previous disability of the injured member or part and the degree or extent of the aggravation or increase of disability thereof.

Should any further accident result in the permanent total disability of such injured workman, he shall receive the pension to which he would be entitled notwithstanding the payment of a lump sum for his prior injury.

(h) If aggravation, diminution, or termination of disability takes place or be discovered after the rate of compensation shall have been established or compensation terminated, in any case the Director of Labor and Industries, through and by means of the Division of Industrial Insurance, may, upon the application of the beneficiary, made within five years after the establishment or termination of such compensation, or upon his own motion, readjust for further application the rate of compensation in accordance with the rules in this section provided for the same, or in proper case terminate the payment: *Provided,* Any such applicant whose compensation has heretofore been established or terminated shall have five (5) years from the taking effect of this act within which to apply for such readjustment.

No act done or ordered to be done by the Director of Labor and Industries or the Department of Industrial Insurance, prior to the signing and filing in the matter of a written order for such readjustment, shall be ground for such readjustment: *Provided, however,* That if within the time limit for taking an appeal from an order closing a claim, the Department shall order the submission of further evidence or the investigation of any further fact, the time for appeal from such order closing the claim shall be extended until the applicant shall have been advised in writing of the final order of the Department in the matter.

(i) A husband or wife of an injured workman, living in a state of abandonment for more than one year at the time of injury or subsequently, shall not be a beneficiary under this act. A wife who has lived separate and apart from her husband for the period of two years and who has not, during that time, received, or attempted by process of law to collect, funds for her support or maintenance, shall be deemed living in a state of abandonment.

(j) If a beneficiary shall reside or remove out of the State, the Department may, in its discretion, with the written consent of the beneficiary, convert any monthly payments provided for such cases into a lump sum payment (not in any case to exceed the value of the annuity then remaining, to be fixed and certified by the State Insurance Commissioner, but in no case to exceed the sum of five thousand dollars ($5,000.00)).

(k) No workman injured after June 30th, 1923, shall receive or be en-

titled to receive compensation out of the accident fund for or during the day on which injury was received or the three days following the same.

(l) If it be determined by the Department of Labor and Industries that an injured workman had, at the time of his injury, a pre-existing disease and that such disease delays or prevents complete recovery from such injury, the said Department shall ascertain, as nearly as possible, the period over which the injury would have caused disability were it not for the diseased condition and/or the extent of permanent partial disability which the injury would have caused were it not for the disease, and award compensation only therefor.

Sec. 7679a. Dependent Invalid Child.

A dependent invalid child over the age of eighteen years shall have the same status under this act as a child under the age of eighteen years. Wherever provision is made in this act for payment to or on account of a child under eighteen years, like payment shall be deemed to be provided to or on account of a dependent invalid child over the age of eighteen years during the period of such dependency. (L. '41, ch. 209, § 3.)

Sec. 7679-1. Occupational Diseases Compensable. (Effective midnight June 10, 1941. Amends chapter 135, Session Laws 1939.)

Within the contemplation of this act, "occupational disease" means such disease or infection as arises naturally and proximately out of extrahazardous employment.

Each workman who shall suffer disability from an occupational disease in the course of an extrahazardous employment, or his family and dependents in case of death of the workman from such disease, shall receive the same compensation benefits and medical, surgical and hospital care and treatment as would be paid and provided for a workman injured or killed in extrahazardous employment under the industrial insurance and medical aid act of the state: *Provided, however,* That this act shall not apply where the last exposure to the hazards of the disease occurred prior to January 1, 1937.

Sec. 7679-2. Compensation and Benefits.

The compensation and benefits provided for occupational diseases shall be paid from the same fund and in the same manner as compensation and benefits for injuries under the industrial insurance and medical aid acts and the contributions of employers to pay therefor shall be determined, assessed and collected in the same manner and as a part of the premiums for extrahazardous employment.

Sec. 7680. Intentional Injuries—Status of Minors.

If injury or death results to a workman from the deliberate intention of the workman himself to produce such injury or death, or while the workman is engaged in the attempt to commit, or the commission of, a crime, neither the workman nor the widow, widower, child or dependent of the workman shall receive any payment whatsoever out of the accident fund. If injury or death result to a workman from the deliberate intention of his employer to produce such injury or death, the workman, the widow, widower, child or dependent of the workman shall have the privilege to take under this act, and also have cause of action against the employer, as if this act had not been enacted, for any excess of damages over the amount received or receivable under this act.

A minor working at an age legally permitted under the laws of this state shall be deemed *sui juris* for the purpose of this act, and no other person shall have any cause of action or right to compensation for an injury to such minor workman except as expressly provided in this act, but in the event of a lump sum payment becoming due under this act to such minor workman, the management of the sum shall be within the probate jurisdiction of the courts the same as other property of minors: *Provided,* That in the event it is necessary to procure the appointment of a guardian to receive the money to which any minor workman is entitled under the provisions of this act, the Director of Labor and Industries may allow from the accident fund, toward the expenses of such guardianship, not to exceed the sum of twenty-five dollars ($25.00) in any one case: *Provided, further,* That in case any such minor shall be awarded a lump sum payment of the sum of two hundred fifty dollars ($250.00), or less, the Director of Labor and Industries shall have power, in his discretion, to make payment direct to such minor without the necessity of the appointment of a guardian.

Sec. 7681. Conversion Into Lump Sum Payment.

In case of death or permanent total disability the monthly payment provided may be converted, in whole or in part, into a lump sum payment (not in any case to exceed five thousand dollars ($5,000.00), equal or proportionate as the case may be to the value of the annuity then remaining, to be fixed and certified by the State Insurance Commissioner, in which event the monthly payment shall cease in whole or in part accordingly or proportionately. Such conversions may only be made after the happening of the injury and upon the written application of the beneficiary (in case of minor children the application may be by either parent) to the Department and shall rest in the discretion of the Department. Within the rule aforesaid the amount and value of the lump sum payment may be agreed upon between the Department and the beneficiary. In the event any payment shall be due to an alien residing in a foreign country, the Department may settle the same by making a lump sum payment in such amount as may be agreed to by such alien, not to exceed 50% of the value of the annuity then remaining.

Nothing herein contained shall preclude the Department from making, and authority is hereby given it to make, on its own motion, lump sum payments equal or proportionate, as the case may be, to the value of the annuity then remaining, in full satisfaction of claims due to dependents.

Sec. 7682. Delinquent Employer's Liability—Priority of Liens for Defaulted Premiums.

(a) If any employer shall default in any payment to the accident fund or the medical aid fund, the sum due shall be collected by action at law in the name of the state as plaintiff, and such right of action shall be in addition to any other right of action or remedy. If such default be after demand, there shall also be collected a penalty equal to twenty-five per centum of the amount of the defaulted payment or payments, and the Department may require from the defaulting employer a bond to the state for the benefit of the accident and medical aid funds, with surety to their satisfaction, in the penalty of double the amount of the estimated payments which will be required from such employer into the said funds for and during the ensuing one year, together with any penalty or penalties incurred. In case of refusal or failure after written demand personally served to furnish such bond, the

state in an action brought by the Attorney General in its name shall be entitled to an injunction restraining such delinquent from prosecuting an extrahazardous occupation or work until such bond shall be furnished, and until all delinquent premiums, penalties, interest and costs are paid, conditioned for the prompt and punctual making of all payments into said funds during said periods, and any sale, transfer or lease attempted to be made by such delinquent during the period of any of the defaults herein mentioned, of his works, plant or lease thereto shall be invalid until all past delinquencies are made good, and such bond furnished.

(b) All actions for the recovery of such payments shall be brought in the superior court and in all cases of probate, insolvency, assignment for the benefit of creditors, or bankruptcy, the claim of the state for payments due herein shall be a lien prior to all other liens, except taxes, and the mere existence of such cases or conditions shall be sufficient to create such lien without any prior or subsequent action by the state, and it shall be the duty of all administrators, receivers or assignees for the benefit of creditors to notify the Department of such administration, receivership or assignment within thirty (30) days from date of their appointment and qualification. In any action or proceeding brought for the recovery of payments due upon the payroll of an employer, the certificate of the Department that an audit has been made of the payroll of such employer pursuant to the direction of the Department and of the amount of such payroll for the period stated in the certificate shall be *prima facie* evidence of such fact.

(c) Separate and apart from and in addition to the foregoing provisions the claims of the state for payments and penalties due under this act shall be a lien prior to all other liens, except taxes, not only against the interests of any employer, but against the interests of all others, in the real estate, plant, works, equipment and buildings improved, operated or constructed by any employer, and also upon any products or articles manufactured by such employer.

The lien created by this subsection (c) shall attach from the date of the commencement of the labor upon such property for which such premiums are due. In order to avail itself of the lien hereby created, the Department shall within four months after such employer shall have made report of his payroll and shall have defaulted in the payment of his premiums thereupon, file with the county auditor of the county within which such property shall then be situated a statement in writing describing in general terms the property upon which a lien is claimed and stating the amount of the lien claimed by the Department. If any employer shall fail, delay, or refuse to make report of his payroll the lien hereby created shall continue in full force and effect although the amount thereof be undetermined and the four months' time within which the Department shall file its claim of lien shall not begin to run until the actual receipt by the department of such payroll report. From and after the filing of such claim of lien, the Department shall be entitled to commence suit to cause such lien to be foreclosed in the manner provided by law for the foreclosure of other liens on real or personal property.

Sec. 7683. Employer's Responsibility for Safeguard.

If any workman shall be injured because of the absence of any safeguard or protection required to be provided or maintained by, or pursuant to any statute, or ordinance, or any Department regulation under any statute, or be,

at the time of the injury, of less than the maximum age prescribed by law for the employment of a minor in the occupation in which he shall be engaged when injured, the employer shall, within ten days after demand therefor by the Department, pay into the accident fund, in addition to the same required by section 7676 to be paid:

(a) In case the consequent payment to the workman out of the accident fund be a lump sum, a sum equal to 50 per cent of that amount.

(b) In case the consequent payment to the workman be payable in monthly payments, a sum equal to 50 per cent of the lump value of such monthly payment, estimated in accordance with the rule stated in section 7681.

The foregoing provisions of this act shall not apply to the employer if the absence of such guard or protection be due to the removal thereof by the injured workman himself or with his knowledge by any of his fellow workmen, unless such removal be by order or direction of the employer or superintendent or foreman of the employer, or any one placed by the employer in control or direction of such workman. If the removal of such guard or protection be by the workman himself or with his consent by any of his fellow workmen, unless done by order or direction of the employer or the superintendent or foreman of the employer, or any one placed by the employer in control, or direction of such workman, the schedule of compensation provided in section 7679 shall be reduced 10 per cent for the individual case of such workman.

Sec. 7684. Exemption of Awards—Payment—Alien Beneficiaries.

No money paid or payable under this act out of the accident fund shall, prior to the issuance and delivery of the warrant therefor, be capable of being assigned, charged, nor ever be taken in execution or attached or garnished, nor shall the same pass, or be paid, to any other person by operation of law, or by any form of voluntary assignment, or power of attorney. Any such assignment or charge shall be void: *Provided,* That if any workman shall suffer a permanent partial injury, and shall die from some other cause than the accident which produced such injury before he shall have received payment of his award for such permanent partial injury, or if any workman shall suffer any other injury and shall die from some other cause than the accident which produced such injury before he shall have received payment of any monthly installment covering any period of time prior to his death, the amount of such permanent partial award, or of such monthly payment or both, shall be paid to his widow, if he leave a widow, or to his child or children if he leave a child or children and shall not leave a widow: *Provided,* That if any workman shall suffer any injury and shall die therefrom before he shall have received payment of any monthly installment covering time loss for any period of time prior to his death, the amount of such monthly payment shall be paid to his widow, if he leave a widow, or to his child or children if he leave a child or children, and shall not leave a widow: *Provided, further,* That if the injured workman shall have resided in the United States as long as three years prior to the date of such injury such payment shall not be made to any widow or child who was at the time of such injury a non-resident of the United States.

Except as otherwise provided by treaty, whenever under the provisions of this act, compensation is payable to a beneficiary or dependent who is an

alien not residing in the United States, the Department shall pay fifty per centum of the compensation herein otherwise provided to such beneficiary or dependent. But if a non-resident alien, beneficiary or dependent, is a citizen of the government having a compensation law which excludes citizens of the United States either resident or non-resident, from partaking of the benefit of such law in as favorable a degree as herein extended to non-resident aliens he shall receive no compensation. No payment shall be made to any beneficiary or dependent residing in any country with which the United States does not maintain diplomatic relations, when such payment is due.

Proof of dependency by any beneficiary or dependent residing without the United States shall be made before the nearest United States consul or consular agent, under the seal of such consul or consular agent, and the Department may cause any warrant or warrants to which such beneficiary or dependent is entitled to be transmitted to the beneficiary or dependent through the nearest United States consul or consular agent.

Sec. 7685. Non-Waiver of Act by Contract.

No employer or workman shall exempt himself from the burden or waive the benefits of this act by any contract, agreement, rule or regulation, and any such contract, agreement, rule or regulation shall be *pro tanto* void.

Sec. 7686. Application for Compensation.

(a) Where a workman is entitled to compensation under this act he shall file with the Department, his application for such, together with the certificate of the physician who attended him, and it shall be the duty of the physician to inform the injured workman of his rights under this act and to lend all necessary assistance in making this application for compensation and such proof of other matters as required by the rules of the department without charge to the workman.

(b) Where death results from injury the parties entitled to compensation under this act or someone in their behalf, shall make application for the same to the Department, which application must be accompanied with proof of death and proof of relationship showing the parties to be entitled to compensation under this act, certificates of attending physician, if any, and such proof as required by the rules of the Department.

(c) If change of circumstances warrants an increase or re-arrangement of compensation, like application shall be made therefor. No increase or rearrangement shall be operative for any period prior to application therefor.

(d) No application shall be valid or claim thereunder enforceable unless filed within one year after the day upon which the injury occurred or the rights of dependents or beneficiaries accrued.

(e) Any physician who fails, neglects or refuses to file a report with the director of labor and industries as required by this act within ten days of the date of treatment, showing the condition of the injured workman at the time of treatment, a description of the treatment given, and an estimate of the probable duration of the injury, or who fails or refuses to render all necessary assistance to the injured workman as required in this act, shall be guilty of a misdemeanor.

Sec. 7687. Physicians Required to Testify.

In all hearings, actions or proceedings before the Department, or before any court on appeal from the department, any physician having theretofore

examined or treated the claimant may be required to testify fully regarding such examination or treatment, and shall not be exempt from so testifying by reason of the relation of physician to patient.

Sec. 7688. Medical Examination—Refusal to Submit—Traveling Expenses.

Any workman entitled to receive compensation under this act is required, if requested by the Department to submit himself for medical examination at a time and from time to time at a place reasonably convenient for the workman and as may be provided by the rules of the Department. If the workman refuses to submit to any such examination, or obstructs the same, his rights to monthly payments shall be suspended until such examination has taken place, and no compensation shall be payable during or for account of such period; or, if any injured workman shall persist in unsanitary or injurious practices, which tend to imperil or retard his recovery, or shall refuse to submit to such medical or surgical treatment as is reasonably essential to his recovery, the Department may reduce or suspend the compensation of such workman. If the workman necessarily incurs traveling expenses in attending for examination pursuant to the request of the Department, such traveling expenses shall be repaid to him out of the accident fund upon proper voucher and audit.

Sec. 7689. Report of Accident.

Whenever any accident occurs to any workman it shall be the duty of such workman or someone in his behalf to forthwith report such accident to his employer, superintendent or foreman in charge of the work and of the employer to at once report such accident and the injury resulting therefrom to the Department and also to any local representative of the Department.

Sec. 7690. Inspection of Employers' Books.

The books, records and payrolls of the employer pertinent to the administration of this act shall always be open to inspection by the Department or its traveling auditor, agent or assistant, for the purpose of ascertaining the correctness of the payroll, the men employed, and such other information as may be necessary for the Department and its management under this act. Refusal on the part of the employer to submit said books, records and payrolls for such inspection to any member of the Department, or any assistant presenting written authority from the Department, shall subject the offending employer to a penalty of one hundred dollars for each offense, to be collected by civil action in the name of the state and paid into the accident fund, and the individual who shall personally give such refusal shall be guilty of a misdemeanor.

Sec. 7692. Public and Contract Work—Liability for Premiums.

Whenever the state, county, any municipal corporation or other taxing district shall engage in any extrahazardous work, or let a contract therefor, in which workmen are employed for wages, this act shall be applicable thereto. The employer's payments into the accident fund shall be made from the treasury of the state, county, municipality or other taxing district. If said work is being done by contract, the payroll and total work-men hours of the contractor and the sub-contractor shall be the basis of computation, and in the case of contract work consuming less than one year in performance the required payment into the accident fund shall be based upon the total pay-

roll and total work-men hours. The contractor and any sub-contractor shall be subject to the provisions of the act, and the state for its general fund, the county, municipal corporation or other taxing district shall be entitled to collect from the contractor the full amount payable to the accident fund, and the contractor, in turn shall be entitled to collect from the sub-contractor his proportionate amount of the payment. Whenever and so long as, by state law, city charter or municipal ordinance, provision is made for municipal employes injured in the course of employment, such employes shall not be entitled to the benefits of this act and shall not be included in the payroll of the municipality under this act.

The provisions of this act shall apply to all extrahazardous work done by contract; the person, firm or corporation who lets a contract for such extrahazardous work shall be responsible primarily and directly for all payments due to the accident fund and medical aid fund upon the work. The contractor and any sub-contractor shall be subject to the provisions of this act, and the person, firm or corporation letting the contract shall be entitled to collect from the contractor the full amount payable to the accident fund and medical aid fund, and the contractor in turn shall be entitled to collect from the sub-contractor his proportionate amount of the payment.

It shall be unlawful for any city or town to issue a construction building permit to any person who has not submitted to the Department of Labor and Industries an estimate of payroll and total work-men hours and paid premium thereon as provided by section 7676 of Remington's Revised Statutes.

Sec. 7692-1. Benefits to Persons in Hazardous and Extrahazardous Occupations in Charitable or Non-profit Institutions.

Every person employed in a hazardous and/or extrahazardous occupation by an individual, firm, association or corporation operating a charitable or non-profit institution, enterprise, business or establishment, shall be entitled to the benefits of Pierce's Perpetual Code 702 to 718, chapter 74, Laws of 1911, and all amendments thereto relating to compensation for injured workmen.

Sec. 7693. Intrastate and Interstate Railway Employes.

Inasmuch as it has proved impossible in the case of employes of common carriers by railroad, engaged in maintenance and operation of railways doing interstate, foreign and intrastate commerce, and in maintenance and construction of their equipment, to separate and distinguish the connection of such employes with interstate or foreign commerce from their connection with intrastate commerce, and such employes have, in fact, received no compensation under this act, the provisions of this act shall not apply to work performed by such employes in the maintenance and operation of such railroads or performed in the maintenance or construction of their equipment, or to the employes of such common carriers by railroad engaged therein, but nothing herein shall be construed as excluding from the operation of this act railroad construction work, or the employes engaged thereon: *Provided, however,* That common carriers by railroad engaged in such interstate or foreign commerce and in intrastate commerce shall, in all cases where liability does not exist under the laws of the United States, be liable in damages to any person suffering injury while employed by such carrier, or in case of the death of such employe, to his surviving wife and child, or children and if no surviving wife or child or children, then to the parents, sisters, or minor

brothers, residents of the United States at the time of such death, and who were dependent upon such deceased for support, to the same extent and subject to the same limitations as the liability now existing, or hereafter created, by the laws of the United States governing recoveries by railroad employes injured while engaged in interstate commerce: *Provided, further, however,* That if any interstate common carrier by railroad shall also be engaged in one or more intrastate enterprises or industries (including street railways and power plants) other than its railroad, the foregoing provisions of this section shall not exclude from the operation of the other sections of this act or bring under the foregoing proviso of this section any extrahazardous work of such other enterprise or industry, the payroll of which may be clearly separable and distinguishable from the payroll of the maintenance or operation of such railroad, or of the maintenance or construction of its equipment: *Provided, further,* That nothing in this section shall be construed as relieving an independent contractor engaged through or by his employes in performing extrahazardous work for a common carrier by railroad, from the duty of complying with the terms of this act, nor as depriving any employe of such independent contractor of the benefits of this act.

Sec. 7693-a. Maritime Occupations—Segregations of Payrolls—Common Enterprise.

The provision of this act shall apply to all employers and workmen, except a master or member of a crew of any vessel, engaged in maritime occupations for whom no right or obligation exists under the maritime laws for personal injuries or death of such workmen.

If an accurate segregation of payrolls covering any class or classes of workmen engaged in maritime occupations and working part time on shore and part time off shore can not be made by the employer, the Director of the Department of Labor and Industries is hereby authorized and directed to fix from time to time a basis for the approximate segregation of the payrolls of such class or classes of employes to cover the shore part of their work, and the employer shall pay to the accident fund on that basis for the time such workmen are engaged in their work.

Where two or more employers are simultaneously engaged in a common enterprise at one and the same site or place in maritime occupations under circumstances in which no right or obligation exists under the maritime laws for personal injuries or death of such workmen, such site or place shall be deemed for the purpose of this act to be the common plant of such employers.

Sec. 7695. Intrastate and Interstate Commerce.

The provisions of this act shall apply to employers and workmen (other than railways and their workmen) engaged in intrastate and also in interstate or foreign commerce, for whom a rule of liability or method of compensation now exists under or may hereafter be established by the Congress of the United States, only to the extent that the payroll of such workmen may and shall be clearly separable and distinguishable from the payroll of workmen engaged in interstate or foreign commerce: *Provided,* That as to workmen whose payroll is not so clearly separable and distinguishable, the employer shall in all cases be liable in damages for injuries to the same extent and under the same circumstances as is specified in the case of railroads in the first proviso of section 7693.

Sec. 7696. Employer's Elective Adoption of Act—Workman's Election.

Any employer engaged in any occupation other than those enumerated or declared to be under this act as provided in section 7674 of Remington's Revised Statutes may make written application to the Director of Labor and Industries to fix rates of contribution for such occupation for industrial insurance and for medical aid, and thereupon it shall be the duty of the Director of Labor and Industries through the Division of Industrial Insurance to fix such rate, which shall be based on the hazard of such occupation in relation to the hazards of the occupations for which rates are prescribed. When such rate shall be so fixed such applicant may file notice in writing with the Supervisor of Industrial Insurance, giving ten days' notice of his or its election to contribute under this act, and shall forthwith display in a conspicuous manner about his or its works and in a sufficient number of places to reasonably inform his or its workmen of the fact, printed notices furnished by the Department stating that he or it has elected to contribute to the accident fund and the medical aid fund and stating when said election will become effective. Any workman in the employ of such applicant shall be entitled at any time within five days after the posting of said notice by his employer, or within five days after he has been employed by an employer who has elected to become subject to this act as herein provided, to give a written notice to such employer and to the Department of his election not to become subject to this act. At the expiration of the time fixed by the notice of such employer, the employer and such of his or its workmen as shall not have given such written notice of their election to the contrary shall be subject to all the provisions of sections 7673 to 7796 of Remington's Revised Statutes, and entitled to all of the benefits thereof: *Provided, however,* That those who have heretofore complied with the foregoing conditions and are at the time of the passage of this amendment carried and considered by the Department as within the purview of this act shall be deemed and considered as having fully complied with its terms and shall be continued by the Department as entitled to all of the benefits and all of the liabilities without other or further action.

Sec. 7697. Appeals to Joint Board and Court Review.

Whenever the Department of Labor and Industries has made any order, decision or award, it shall promptly serve the claimant, employer or other person affected thereby, with a copy thereof by mail, which shall be addressed to such claimant, employer or person at his last known address as shown by the records of the Department. Any claimant, employer or other person aggrieved by any such order, decision or award must, before he appeals to the courts, serve upon the Director of Labor and Industries, by mail or personally, within sixty days from the day on which such copy of such order, decision or award was communicated to the applicant, an application for rehearing before the Joint Board of said Department, consisting of the Director of Labor and Industries, the Supervisor of Industrial Insurance and the Supervisor of Safety. Such application shall set forth in full detail the grounds upon which the applicant considers such order, decision or award is unjust or unlawful, and shall include every issue to be considered by the Joint Board, and it must contain a detailed statement of facts upon which such claimant, employer or other person relies in support thereof. The claimant, employer or other person shall be deemed to have waived all objections or irregularities concerning the matter on which such rehearing is sought other than those

specifically set forth in such application for rehearing or appearing in the records of the Department. If the Joint Board, in its opinion, considers that the Department has previously considered fully all matters raised by such application it may, without further hearing, deny the same and confirm the previous decision or award, or if the evidence on file with the Joint Board sustains the applicant's contention, it may, without further hearing, allow the relief asked in such application; otherwise, it shall order a rehearing to decide the issues raised. If a rehearing be granted it shall be heard in the county of the residence of the applicant, or in the county where the injury occurred, at a place designated by the Joint Board, but the hearing thereof may be adjourned from time to time and from place to place within said county, as the convenience of witnesses may require. Such rehearing shall be *de novo* and summary, but no witness' testimony shall be received unless he shall first have been sworn to testify the truth, the whole truth and nothing but the truth in the matter being heard, or unless his testimony shall have been taken by deposition according to the statutes relating to superior courts of this state. The Joint Board shall cause all oral testimony to be stenographically reported and thereafter transcribed, and when transcribed the same, with all depositions, shall be filed in, and remain a part of, the record on the rehearing. Such rehearing may be conducted by one or more of the members of the Joint Board, or by some person or persons in the regular employ of the Department, duly commissioned by said board to conduct such hearing, but the record on rehearing shall be considered by all of the members of said Joint Board, and the decision of a majority of said Joint Board shall be the decision of said Joint Board, and upon such decision being rendered all parties to said rehearing shall be given written notice thereof by the Joint Board.

An application for rehearing shall be deemed to have been denied by the Joint Board unless it shall have been acted upon within thirty days from the date of service: *Provided, however,* That the Joint Board may in its discretion, extend the time within which it may act upon such application, not exceeding thirty days.

Each of the members of the Joint Board, and those commissioned by it as aforesaid, shall have power to administer oaths; to preserve and enforce order during such rehearing; to issue subpoenas for, and to compel the attendance and testimony of, witnesses, or the production of books, papers, documents and other evidence, or the taking of depositions before any designated individual competent to administer oaths, and it shall be their duty so to do; to examine witnesses; and to do all things conformable to law which may be necessary to enable them, or any of them, effectively to discharge the duties of his office.

If any person in proceedings before the Joint Board disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglect to produce, after having been ordered so to do, any pertinent book, paper, or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take oath as a witness, or after having the oath refuses to be examined according to law, the Joint Board or any member thereof shall certify the facts to the superior court having jurisdiction in the place in which said Joint Board or member thereof is sitting; it shall thereupon, in a summary manner, hear the evidence as to the acts complained of, and, if the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt com-

mitted before the court, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the proceedings, or in the presence, of the court.

Within thirty days after the final order of the Joint Board upon such application for rehearing has been communicated to such applicant, or within thirty days after rehearing is deemed denied as herein provided, such applicant may appeal to the superior court of the county of his residence, or to the superior court of the county wherein the injury occurred, but upon such appeal may raise only such issues of law or fact as were properly included in his application for rehearing, or in the complete record in the Department. On such appeal the hearing shall be *de novo,* but the appellant shall not be permitted to offer, and the court shall not receive, in support of such appeal, evidence or testimony other than, or in addition to, that offered before the Joint Board or included in the record filed by the Department: *Provided,* That the right of cross examination shall not be limited by the testimony before the Joint Board. The proceedings in every such appeal shall be informal and summary, but full opportunity to be heard shall be had before judgment is pronounced. Such appeal shall be perfected by filing with the clerk of the court a notice of appeal and by serving a copy thereof by mail, or personally, on the Director of Labor and Industries. The Department of Labor and Industries shall, within twenty days after receipt of such notice of appeal, serve and file its notice of appearance and such appeal shall thereupon be deemed at issue. No bond shall be required on such appeal or on appeals to the supreme court, except that an appeal by the employer from a decision of the Department under section 7683 of Remington's Compiled Statutes shall be ineffectual unless, within five days following the service of notice thereof, a bond, with surety satisfactory to the court, shall be filed, conditioned to perform the judgment of the court. Except in the case last named an appeal shall not be a stay. The calling of a jury shall rest in the discretion of the court, except that in cases arising under section 7683 and 7690 of Remington's Compiled Statutes, either party shall be entitled to a jury trial upon demand.

The Department of Labor and Industries shall serve upon the appellant and file with the clerk of the court before trial, a certified copy of its complete record on the claim, which shall, upon being so filed, become a part of the record in such case.

If the court shall determine that the Department has acted within its power and has correctly construed the law and found the facts, the decision of the Department shall be confirmed; otherwise, it shall be reversed or modified. In case of a modification or reversal the superior court shall refer the same to the Department of Labor and Industries with an order directing it to proceed in accordance with the findings of the court: *Provided,* That any award shall be in accordance with the schedule of compensation set forth in this act.

It shall be unlawful for any attorney engaged in any such appeal to charge or receive any fee therein in excess of a reasonable fee, to be fixed by the court in the case, and if the decision of the Joint Board shall be reversed or modified, such fee and the fees of medical and other witnesses and the costs shall be payable out of the administrative fund, if the accident fund is affected by the litigation. In other respects the practice in civil cases shall apply. Appeal shall lie from the judgment of the superior court as in other civil cases. The Attorney General shall be the legal adviser of the Joint Board and shall represent it in all proceedings. In all court proceedings under or pur-

suant to this act the decision of the Department shall be *prima facie* correct and the burden of proof shall be upon the party attacking the same.

Sec. 7697-1. Payment of Costs of Appeals.

Whenever any appeal is taken from any decision of the Division of Industrial Insurance of the Department of Labor and Industries to the Joint Board or to any court, all expenses and costs incurred therein by the Department of Labor and Industries, including fees for expert medical testimony, court reporter costs and attorneys' fees, and all costs taxed against such Department, shall be paid one-half out of the medical aid fund and one-half out of the accident fund of the state treasury.

Sec. 7697-2. Appeals.

In all appeals to the superior court from any order, decision or award of the Joint Board of the Department of Labor and Industries, either party shall be entitled to a trial by jury upon demand. The jury's verdict in every such appeal shall have the same force and effect as in actions at law. In any such appeal the trial shall be *de novo* and no party to the appeal shall be permitted to introduce evidence in court in addition to that contained in the departmental record.

Sec. 7699. Attendance of Witnesses and Production of Papers.

The superior court shall have power to enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and records before the Industrial Insurance Department.

Sec. 7702. Application of Amendatory Act.

For all cases of injuries to workmen which occurred before this act shall go into effect sections 7675, 7679, 7680 and 7684 shall continue in force as they were prior to and they shall be unaffected by the passage of this amendatory act. The amendatory provisions of sections 7674, 7676, 7679 and 7680 of this act shall apply only to injuries occurring after they shall go into effect.

Sec. 7703. Conduct, Management and Supervision of Department.

The Director of Labor and Industries shall, in accordance with the provisions of this act:

1. Establish and promulgate rules governing the administration of this act.

2. Ascertain and establish the amounts to be paid into and out of the accident fund.

3. Regulate the proof of accident and extent thereof, the proof of death and the proof of relationship and the extent of dependency.

4. Supervise the medical, surgical and hospital treatment to the intent that same may be in all cases efficient and up to the recognized standard of modern surgery.

5. Issue proper receipts for moneys received, and certificates for benefits accrued and accruing.

6. Investigate the cause of all serious injuries and report to the Governor from time to time any violations or laxity in performance of protective statutes or regulations coming under the observation of the Department.

7. Create a division of statistics within which shall be compiled such statistics as will afford reliable information upon which to base operations of all divisions under said Department.

8. Make annual report to the Governor (one of them not more than sixty nor less than thirty days prior to each regular session of the legislature) of the workings of the Department, and showing the financial status and the outstanding obligations of the accident fund, and the statistics aforesaid.

Sec. 7704. Violation of Rules—Penalty.

Every person, firm or corporation who shall violate or fail to obey, observe or comply with any rule of the Department promulgated under authority of this act, shall be subject to a penalty of not to exceed five hundred dollars ($500.00). Such penalty may be recovered in a civil action in the name of the state, and shall be paid into the accident fund.

Sec. 7705. Disbursement of Funds.

Disbursement out of the funds shall be made only upon warrant drawn by the State Auditor upon vouchers therefor transmitted to him by the Department and audited by him. The State Treasurer shall pay every warrant out of the fund upon which it is drawn. If, at any time, there shall not be sufficient money in the fund on which any warrant shall have been drawn wherewith to pay the same, the employer on account of whose workman it was that the warrant was drawn shall pay the same and he shall be credited upon his next following contribution to such fund the amount so paid with interest thereon at the legal rate from the date of such payment to the date such next following contribution became payable, and if the amount of the credit shall exceed the amount of the contribution, he shall have a warrant upon the same fund for the excess, and if any such warrant shall not be so paid, it shall remain, nevertheless, payable out of the fund. The State Treasurer shall to such extent as shall appear to him to be advisable keep the moneys of the unsegregated portion of the accident fund invested at interest in the class of securities provided by law for the investment of the permanent school fund. The State Treasurer shall be liable on his official bond for the safe custody of the moneys and securities of the accident fund, but all the provisions of an act approved February 21, 1907, entitled "An act to provide for state depositories and to regulate the deposits of state moneys therein," shall be applied to said moneys and the handling thereof by the State Treasurer.

Sec. 7705-1. Investments from Accident Fund and Reserve Fund Authorized.

Whenever in the judgment of the state finance committee there shall be in the accident fund or in the reserve fund created by the workmen's compensation act funds in excess of that amount deemed by such committee to be sufficient to meet the current expenditures properly payable therefrom the state finance committee may invest such excess funds in national, state, county, municipal, or school district bonds, and the state finance committee shall exercise the same discretion and have the same authority with respect to the investment of such excess funds as is provided by law with respect to the investment of the permanent school fund.

Sec. 7705-2. Transfers to Reserve Fund.

On and after October 1, 1941, for every claim resulting in death or permanent total disability, it shall be the duty of the Department of Labor and Industries to make transfer on their books from the accident fund of the proper class to the reserve fund a sum of money for that case equal to the estimated present cash value of the monthly payments provided for it, to be calculated upon the basis of an annuity covering the payments in this section provided to be made for the case. Such annuities shall be based upon tables to be prepared for that purpose by the State Insurance Commissioner and by him furnished to the State Treasurer, calculated upon standard mortality tables with an interest assumption of three per cent (3%) per annum.

Sec. 7706. Test of Invalidity of Act.

If any employer shall be adjudicated to be outside the lawful scope of this act, the act shall not apply to him or his workmen, or if any workman shall be adjudicated to be outside the lawful scope of this act because of remoteness of his work from the hazard of his employer's work, any such adjudication shall not impair the validity of this act in other respects, and in every such case an accounting in accordance with the justice of the case shall be had of moneys received. If the provisions of section 7676 of this act for the creation of the accident fund or the provisions of this act making the compensation to the workmen provided in it exclusive of any other remedy on the part of the workman shall be held invalid the entire act shall be thereby invalidated except the provisions of section 7710, and an accounting according to the justice of the case shall be had of moneys received. In other respects an adjudication of invalidity of any part of this act shall not affect the validity of the act as a whole or any other part thereof.

Sec. 7707. Statute of Limitations Saved.

If the provisions of this act relative to compensation for injuries to or death of workmen become valid because of any adjudication, or be repealed, the period intervening between the occurrence of any injury or death, not previously compensated for under this act by lump payment or completed monthly payments, and such repeal or the rendition of the final adjudication of the invalidity shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death: *Provided,* That such action be commenced within one year after such appeal or adjudication; but in any such action any sum paid out of the accident fund to the workman on account of injury, to whom the action is prosecuted, shall be taken into account or disposed of as follows: If the defendant employer shall have paid without delinquency into the accident fund the payment provided by section 7676, such sums shall be credited upon the recovery as payment thereon, otherwise the sum shall not be so credited, but shall be deducted from the sum collected and be paid into the said fund from which they had been previously disbursed.

Sec. 7709. Safeguard Regulations Preserved.

Nothing in this act contained shall repeal any existing law providing for the installation or maintenance of any device, means or method for the prevention of accidents in extrahazardous work or for a penalty or punishment for failure to install or maintain any such protective device, means or method, but sections 8, 9, and 10 of the act approved March 6, 1905, entitled: "An

act providing for the protection and health of employes in factories, mills or workshops, where machinery is used, and providing for suits to recover damages sustained by the violation thereof, and prescribing a punishment for the violation thereof and repealing an act entitled, 'An act providing for the protection of employes in factories, mills, or workshops where machinery is used, and providing for the punishment of the violation thereof, approved March 6, 1903,' and repealing all other acts or parts of acts in conflict herewith," are hereby repealed, except as to any cause of action which shall have accrued thereunder prior to October 1, 1911. (L. '11, p. 373, § 30.)

Sec. 7710. Distribution of Funds in Case of Appeal.

If this act shall be hereafter repealed, all moneys which are in the accident fund at the time of the repeal shall be subject to such disposition as may be provided by the legislature, and in default of such legislative provision distribution thereof shall be in accordance with the justice of the matter, due regard being had to obligations of compensation incurred and existing.

Sec. 7711. Saving Clause.

This act shall not affect any action pending or cause of action existing on the thirtieth day of September, 1911.

MEDICAL AID ACT

Sec. 7712. Classification of Industries for Medical Aid.

It is the intent to require the industries of the state to furnish medical, surgical and hospital care to their injured workmen and to place the expense thereof upon each industry as near as may be in proportion in which it produces injury and creates expense.

The rate which each industry shall pay into the medical aid fund shall be as provided in section 7676 of Remington's Revised Statutes, which rate may be increased or decreased, by the Director of Labor and Industries through and by means of the Division of Industrial Insurance, based upon the medical aid cost experience of such industry.

From any change made in such rates any employer or workman claiming to be aggrieved may upon application, have a hearing before the Division of Industrial Insurance upon notice to the interested parties and in the manner provided in section 7697 of Remington's Revised Statutes, a review by the courts. The body of interested workmen may designate in writing in duplicate, one of them to be the recipient of service upon all of them, one copy to be posted for local convenience, and the other to be filed with the Supervisor of Industrial Insurance. In default of any such designation, service upon any one workman other than the one instituting a complaint shall be service upon all.

Sec. 7713. Medical Aid Fund—Payments Into.

A fund is hereby created in the State Treasury to be known as the medical aid fund. Into it shall be paid by each employer on or before the 15th day of September, 1923, and on or before the 15th day of January, May and September of each year thereafter for each day's work or fraction thereof done for him in extrahazardous employment in or during the preceding four calendar months the medical aid rate provided in sections 7676 and 7712 of Remington's Revised Statutes. (*Superseded by section 7676 as amended.*)

The employer shall deduct from the pay of each of his workmen engaged in extrahazardous work one-half of the amount the employer is required by the foregoing provision of this section to pay into said fund for or on account of the employment of such workman.

Sec. 7713-1. Employer's Deductions from Wages—Trust Fund.

All monies realized by any employer from his or its employees either by collection or by deduction from the wages or pay of employees intended or to be used for the furnishing to workmen engaged in extrahazardous work, their families or dependents, of medical, surgical or hospital care and treatment, or for nursing, ambulance service, burial or any or all of the above enumerated services, or any service incidental to or furnished or rendered because of sickness, disease, accident or death, and all monies owing by any employer thereof, shall be and remain a fund for the purposes for which such monies are intended to be used, and shall not constitute or become any part of the assets of the employer making such collections or deductions: *Provided, however,* That this act shall not apply to monies collected or deducted as aforesaid for, or owing by employers to the state medical aid fund. Such monies shall be paid over promptly to the physician or surgeon or hospital association or other parties to which such monies are due and for the purposes for which such collections or deductions were made.

Sec. 7713-2. Default in Payment—Action to Recover—Priority and Lien Rights.

If any such employer shall default in any such payment to any physician, surgeon, hospital, hospital association or any other parties to whom any such payment is due, the sum so due may be collected by an action at law in the name of the physician, surgeon, hospital, hospital association or any other party to whom such payment is owing, or their assigns and against such defaulting employer, and in addition to such action, such claims shall have the same priority and lien rights as granted to the state for claims due the accident and medical aid funds by section 7682 of this code, and acts amendatory thereto, which priority and lien rights shall be enforced in the same manner and under the same conditions as provided in said section 7682: *Provided, however,* That the said claims for physicians, surgeons, hospitals and hospital associations and others shall be secondary and inferior to any claims of the state and to any claims for labor. Such right of action shall be in addition to any other right of action or remedy.

Sec. 7714. Medical and Surgical Aid, Hospital Care and Transportation.

Upon the occurrence, after June 30, 1923, of any injury to a workman entitled to compensation under the provisions of said sections 7673 to 7796, he shall receive in addition to such compensation, and out of the Medical Aid Fund, proper and necessary medical and surgical services, at the hands of a physician of his own choice if conveniently located, and proper and necessary hospital care and services during the period of his disability from such injury, but the same shall be limited in point of duration as follows:

In the case of permanent partial disability not to extend beyond the date when compensation shall be awarded him out of the accident fund, except when the workman returned to work before permanent partial disability award is made, in such case not to extend beyond the time when monthly allowances to him out of the accident fund shall cease, in case of temporary

disability not to extend beyond the time when the monthly allowance to him out of the accident fund shall cease, in case of a permanent total disability not to extend beyond the date on which a lump sum settlement is made with him or he is placed upon the permanent pension-roll. But after any injured workman shall have returned to his work his medical and surgical treatment may be continued at the expense of the medical aid fund if, and as long as, such continuation is deemed by the Supervisor of Industrial Insurance to be necessary to his more complete recovery. In order to authorize such continued treatment in any case the written order of the Supervisor of Industrial Insurance issued in advance of the continuation shall be necessary. The Director of Labor and Industries shall have power to enact rules prescribing whether and under what conditions an injured workman who has been receiving treatment under medical aid contract at a place other than his place of permanent abode and who shall be or have become ambulatory or who being discharged shall require further treatment may be transferred to the care of a surgeon at his place of residence, and providing for the compensation of such surgeon at the expense of the doctor, hospital or hospital association holding such contract.

Every employer, who employs less than fifty workmen, shall keep at his plant a first aid kit equipped as required by the Department with materials for first aid to his injured workman. Every employer, who employs within a radius of one-half mile of any plant or establishment fifty or more workmen, shall keep one first aid station equipped as required by the Department with materials for first aid to his injured workmen, and shall co-operate with the Department in training one or more employees in first aid to the injured. The maintenance of such first aid kits and stations shall be deemed to be a part of any educational standards established under the provisions of sections 7734 and 7736. When the injury to any workman is so serious as to require his being taken from the place of injury to a place of treatment, his employer shall, at his own expense and without charge against the medical aid fund, furnish transportation to the nearest place of proper treatment. To assure prompt and adequate hospital care in cases of serious injury the Department shall furnish to employers covered by this act suitable index cards which the employer shall be required to have filled in and shall keep at all times convenient and accessible on which shall be set forth the name and address of each workman together with such information which in the judgment of the Department is necessary in cases of serious injury where the workman may be rendered unconscious and at the point of death, said card to be filled out at time of employment of workman and to have space for the following information: hospital preferred, doctor preferred, religious, fraternal or union affiliations, and name of nearest relative: *Provided, however,* That such employee may at his option decline to give any or all of the information hereinabove provided for. Every workman whose injury shall result in the loss of one or more limbs or eyes, shall be once provided with proper artificial substitutes to be purchased by the Department at the expense of the accident fund. Every workman, who shall suffer a penetrating wound of the cornea producing an error of refraction, shall be once provided at the expense of the accident fund, proper and properly equipped lenses to correct such error of refraction, and his disability rating shall be based upon the corrected result. Every workman, whose accident shall result in damage to or destruction of an artificial limb, eye or tooth,

shall have same repaired or replaced at the expense of the accident fund. All mechanical appliances necessary in the treatment of an injured workman, such as braces, belts, casts and crutches may be provided at the expense of the medical aid fund and all mechanical appliances required as permanent equipment after treatment has been completed shall be once provided at the expense of the accident fund. A workman, whose injury is of such short duration as to bring him within the provisions of subdivision (1) of section 7679, shall nevertheless receive during the omitted period medical, surgical and hospital care and service and transportation under the provisions of this section.

Sec. 7715. State Medical Aid Board Created—Powers to Make Rules—Appeals.

A board is hereby created to be known as the State Medical Aid Board, hereinafter designated as the state board, which shall have power and whose duty it shall be to from time to time establish and promulgate printed forms, rules, regulations and practices for the furnishing of such care, treatment and services to workmen. Such rules, regulations and practices may vary between the different localities and industries, but shall be in accordance with the rule established in section 7712, and with the principle that the injured workman shall have the most prompt and efficient care and treatment at the least cost consistent with promptness and efficiency, without discrimination or favoritism, and with as great uniformity as the various and diverse (divers) surrounding circumstances and location of industries will permit. The state board shall make and from time to time change as may be, and shall promulgate a fee bill of the maximum charges to be made by any physician, surgeon, hospital, druggist, or other agency or person rendering services to injured workmen. No service covered by such fee bill shall be charged for or paid out of the medical aid fund at a rate or rates exceeding those specified in such fee bill, and no contract providing for greater fees shall be valid as to the excess. Any interested employer or workman may complain to the state board against any such rule or regulation. A hearing shall be had on such complaint upon notice to the employer, and upon the employes in the manner provided in section 7712, and from the decision an appeal will lie to the courts in the manner provided in section 7697. (L. '17, p. 87, 6; R. & B. 6604-36; P. C. 3504.) (*Duties of state medical aid board and local boards devolve upon director of labor and industries. See Rem. Rev. Stat. 10836, 10893.*)

Sec. 7716. Duties of Medical Aid Board.

It shall be the duty of the state board to supervise and control the administration of the rules, regulations and practices promulgated by it and the details thereof, and it shall have supervisory power over the acts and practices of the local aid boards. (L. '19, p. 303, 3; R. & B. 6604-37; P. C. 3505.) *(See notes to section 7715.)*

Sec. 7719. Medical Aid Duties of Director.

It shall be the duty of the Director of Labor and Industries, through and by means of the Division of Industrial Insurance to provide care and treatment for each workman injured after June 30, 1923, in extrahazardous employment, to make a record of the commencement of every disability and the termination of the same and subject to the provisions of section 7716 of Remington's Revised Statutes to certify all bills rendered for care or treatment of injured workmen, with power to reject any bill or item thereof incurred in violation

of the principles laid down in section 7715 of Remington's Revised Statutes, or the rules and regulations promulgated thereunder. *(See notes to section 7715.)*

Sec. 7720. Right of Appeal from Medical Aid Order.

The injured workman, or anyone connected with his treatment, or any interested employer, may appeal from any contract made by and decision rendered by or any practice or act of the local aid board to the state board. Any such appeal may be effected by written or telegraphic notice to the secretary of the state board. Except in cases of medical or surgical emergency, the hearing of such appeal shall be upon notice given by the secretary or any member of the state board to the workman under treatment, if there be one, or to some member of his family, to the employer or employers and employes interested. The notice to the employes may be given in the manner provided in section 7712. From a decision of the state board an appeal will lie to the courts as provided in section 7697, except that if the appellant prevails, the fees and costs allowed him in his favor shall be payable out of the medical aid fund. The question for decision by the state board or the courts shall be whether or not the matter complained of is violative of the principle laid down in section 7715. *(See note to section 7715.)*

Sec. 7723. Liability of State Treasurer.

The State Treasurer shall be liable on his official bond for the safe custody of the moneys of the medical aid fund. All provisions of the act referred to in section 7705 shall be applied to said moneys and the handling thereof by the state treasurer.

Sec. 7724. Medical Aid Contracts—Approval—Complaints—Termination—Surplus Fund—Notice—Appeal—Emergency Treatment.

Any contract made in violation of this act shall be invalid, except that any employer engaged in extrahazardous work may, with the consent of a majority of his workmen, enter into written contracts with physicians, surgeons and owners of hospitals operating the same, or with hospital associations, for medical, surgical and hospital care to workmen injured in such employment, by, and under the control and administration of, and at the direct expense of the employer and his workmen. Such a contract shall not be assignable or transferable by operation of law or otherwise except with the consent of the Supervisor of Industrial Insurance endorsed thereon. Before any such contract shall go into effect it shall be submitted to the Supervisor of Industrial Insurance, and may be disapproved by the Supervisor of Industrial Insurance when found not to provide for such care of injured workmen as is contemplated by the provisions of section 7715, and if a contract so submitted be with the owners of a hospital operating the same, or with a hospital association, the Supervisor of Industrial Insurance shall have power to disapprove the same if in his judgment the ownership or management of such hospital or hospital association shall not be such as to produce satisfactory service. Any such contract with physician, surgeon, or owner and operator of a hospital, or with a hospital association, so disapproved shall not be valid. Otherwise it shall be approved, and take and continue in effect for any period of time specified therein, not exceeding three years from the date of such approval: *Provided, however,* That the Director of Labor and Industries, through the Division of Industrial Insurance, may, before approving any such contract, require the

giving by any physician, surgeon, hospital or hospital association, of a bond in such sum and in such form, as the Director may determine, conditioned that the obligor will faithfully perform such contract. Every such contract to be valid must provide that the expenses incident to it shall be borne one-half by the employer and one-half by such employes, and that it shall be administered by the two interests jointly and equally. So long as such contract shall be in effect the subject matter of the contract shall (except as in this section otherwise specified) be outside of, and not affected by, the provisions of section 7712 to 7723, inclusive, and section 7725, other than the provisions of section 7714 relating to artificial substitutes and lenses and the basis of compensation when lenses are supplied, and to transportation of injured workmen, and to educational standards of safety, and other than the provisions of section 7719 relating to the analyses and reports of accidents, and the employer shall pay monthly into the medical aid fund ten per centum of the amount he would have been required to pay in that month if such contract had not been made, and of that ten per centum he shall collect one-half from his said workmen by proper deduction from the daily wage of each, and in addition thereto, every classification and/or sub-classification of industries whose employer and employes are under medical aid contract, shall pay into the surplus fund hereby created, a further sum to be determined by the Director of Labor and Industries, through and by means of the Division of Industrial Insurance, not exceeding ten per centum of the amount that would have been required to be paid into the medical aid fund if such contract had not been made and the employer shall collect such sum from the party agreeing to furnish such medical aid and hospital service. Said surplus fund shall only be used by the Director of Labor and Industries for the purpose of furnishing necessary medical aid to workmen included in the contract provided for in this section, where the necessity therefor arises after the expiration or cancellation of such medical aid contract, in those instances where the medical aid contractor has become deceased, insolvent, dissolved or, in the opinion of the Director of Labor and Industries, otherwise incapable of rendering the required medical aid to the injured workman. The amount at which such surplus fund shall be maintained in each classification and/or subclassification shall be determined by the Director of Labor and Industries, through and by means of the Division of Industrial Insurance, based upon the estimated costs of such future medical treatment required to be furnished after the expiration or cancellation of the medical aid contract, except as in this section provided. When adequate reserves for such purpose have been accumulated to the credit of any classification and/or sub-classification the levy therefor may be suspended in the discretion of the Director of Labor and Industries. Disbursements from said surplus fund shall be made by warrants drawn against the same by the State Auditor upon certificate thereof, or requisition therefor, by the Director of Labor and Industries through, and by means of, the Division of Industrial Insurance. Payment into the surplus fund shall not relieve the party agreeing to furnish such medical aid and hospital service from his obligation so to do at any time during or after the expiration of his medical aid contract except as in this section provided: *Provided, however,* That if upon the expiration of any medical aid contract, the medical aid contractor shall not renew the same and shall forthwith and thereafter cease the performance of all medical aid contracts as in this section provided, the medical aid contractor shall be relieved from

all liability to furnish future medical aid to the injured workman arising after the expiration of such contract or contracts providing he shall have paid all levies theretofore made during the existence of such contract or contracts into the surplus fund. During the operation of any such contract the Supervisor of Industrial Insurance or any interested person may file a complaint with the Supervisor of Industrial Insurance alleging that the service and care actually rendered thereunder are not up to the standard provided in section 7715, and, upon a hearing had upon notice to the employer and workmen interested thereunder, the Supervisor of Industrial Insurance may make an order that the contract shall terminate unless the defect or deficiency complained of shall be remedied to his satisfaction within a period to be fixed in such order, or he may at such hearing sustain the complaint and make an order that the contract shall terminate forthwith.

Notice to the workmen may be effected in the manner provided in section 7712. The employer or any interested workman may appeal from such decision in the manner provided in section 7697 hereof. During the appeal the contract shall remain in force and operation, but the costs of the appeal shall be paid out of the medical aid fund only in case the decision of the Supervisor of Industrial Insurance is reversed. If during the operation of any such contract, any injured workman shall not receive medical or surgical treatment with reasonable promptness upon the occurrence of his injury, or at any time during his treatment, the Supervisor of Industrial Insurance may provide such treatment during the emergency at the expense of his employer, who may charge such expense against such contract, and such emergency treatment shall continue until supplanted by like treatment under such contract, notwithstanding the pendency of an appeal from such action. The cost of such emergency treatment shall not exceed the rates specified in the fee bill provided by section 7715. The acceptance of employment by any workman shall be and be held to be an acceptance of any existing contract made under this section to which his employer is a party.

No contract for medical, surgical, or hospital care of injured workmen entered into prior to the time this act shall go into effect shall be invalidated by anything in this act contained.

Sec. 7725. Collection and Disbursements of Medical Aid Funds.

The provisions of sections 7673 to 7711, inclusive, of Remington's Revised Statutes, shall be applicable to the collection of the medical aid fund, and to the medical, surgical and hospital care of injured workmen only so far as they are not inconsistent with the provisions of sections 7712 to 7796, inclusive. Disbursements for medical aid administrative expense and disbursements for special medical examinations relating to medical treatment or disability rating and disbursements in payments of bills incurred for the medical, surgical or hospital care of injured workmen shall be made by warrants drawn against the medical aid fund by the state auditor upon certificate thereof or requisition therefor by the Department.

Sec. 7726. Liability for Illegal Collections for Medical Aid.

It shall be unlawful for any employer to directly or indirectly demand or collect from any of his workmen any sum of money whatsoever for or on account of medical, surgical, hospital, or other treatment or transportation of injured workmen other than as specified in sections 7713 and 7724, and

any employer who shall directly or indirectly violate the foregoing provisions of this section shall be liable to the state in civil action for the benefit of the medical aid fund in ten times the amount so demanded or collected, and such employer and every officer, agent, or servant of such employer knowingly participating therein shall also be guilty of a misdemeanor.

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Treatment,		
entitled to, though no compensation	7714	32
refusal to submit to, reduction or suspension of compensation during	7688	22
transportation of, at expense of employer, when	7714	32
under supervision of Director	7703	28
Wages, not chargeable with accident fund premiums	7676	6
Waiver of provisions of act by, prohibited	7685	21

WORKMEN'S COMPENSATION (See ACT).

WORKS (See OCCUPATION; EMPLOYMENT).

WORKSHOP—

Defined	7675	5
Included under act, where machinery is used	7674	3

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421—Perkins Building, Tacoma
101—Fine Arts Building, Bellingham
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233—Finch Building, Aberdeen
205—Commerce Building, Everett
Box 748—Port Angeles
Rm. 14—Fuller-Quigg Building, Wenatchee
Rm. 33-4—Drumheller Building, Walla Walla
212—Myklebust Building, Longview
1st National Bank Building, Mt. Vernon
Harrison Building, Bremerton
Capitol Park Building, Olympia
Gray Building, Pasco

Division of Women and Minors

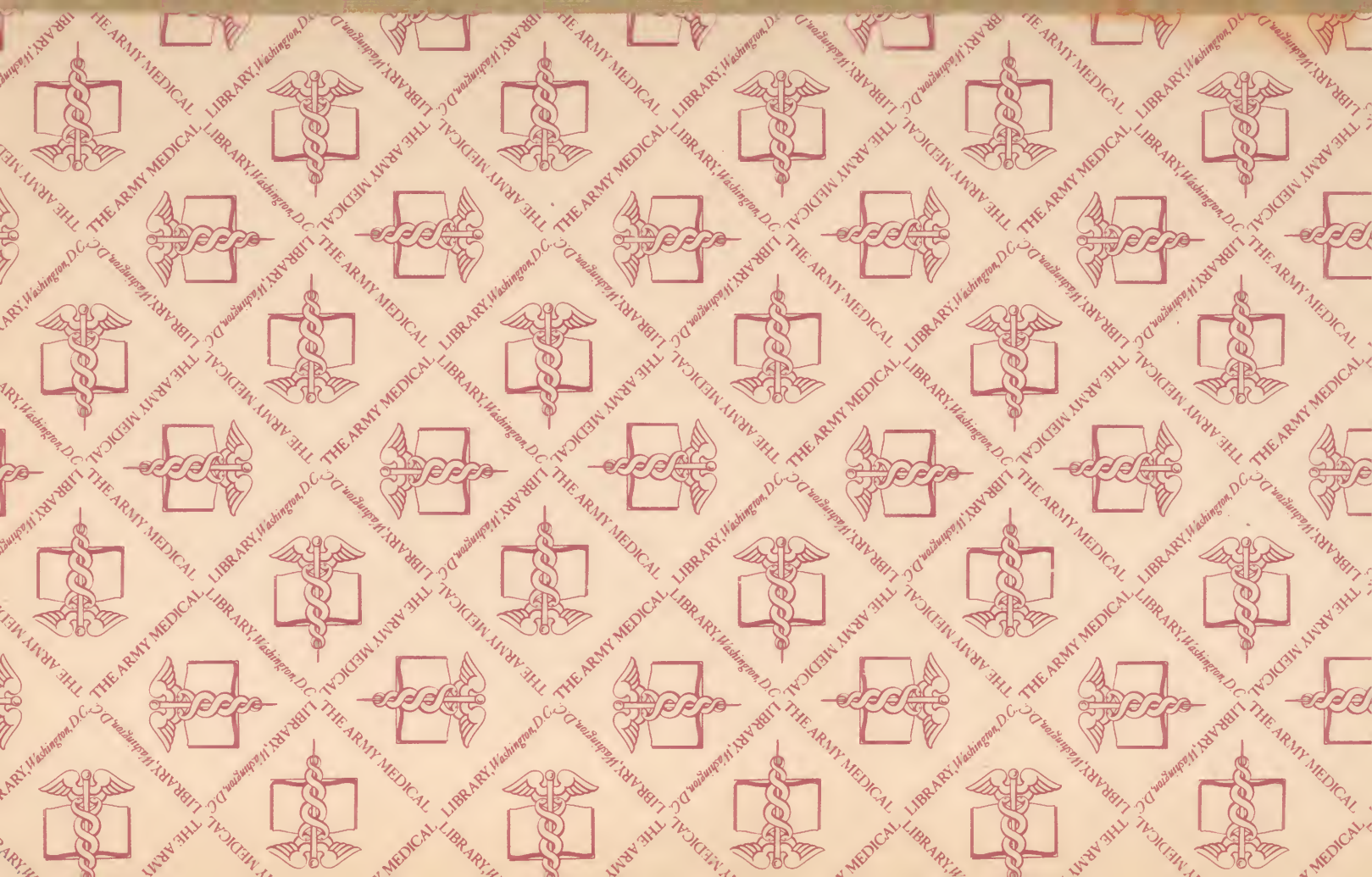
321—Smith Tower, Seattle

Division of Apprentices

905 Second Ave. Bldg., Seattle

Seattle Branch—Division of Industrial Relations

1106 Smith Tower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